Judge Davis

Supreme Court of the United States.

Nos. 22 and 23.—OCTOBER TERM, 1873.

THE STATE ex rel. JAS. ROBB et al., &c., Plff's in Error,

vs.

WM. GURNEY, Treasurer.

AND

THE STATE ex rel. THEO. D. WAGNER, Pl'ff in Error,

vs.

JOHN R. STALL, Treasurer, &c.

ARGUMENT OF MR. B. R. CURTIS,

Counsel for Plaintiffs in Error.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

ARGUMENT.

May it please your honors, I desire at the outset to draw the attention of the court to the relations which existed between all the banks of the State of South Carolina, at the time the act of 1843 was passed, respecting the receivability of the bills of those banks for taxes and other public dues of the State. I do this, because it will be found, that a clear understanding of what those relations at that time were is the foundation of the argument in behalf of the plaintiff in error.

In the year 1802, the State of South Carolina incorporated "The State Bank of South Carolina," which your honors will not confound with the Bank of the State of South Carolina, whose bills are now in question.

In 1802, I say, the State of South Carolina incorporated "The State Bank of South Carolina," and inserted in the 16th section of its charter the same provision which has come in question in this case, as forming the 16th section of the charter of "The Bank of the State of South Carolina." That was the first charter in which that contract was made: the State contracting by that section to receive the bills of this Bank in payment of takes and other public dues of the State, without regard to the fact whether, when they were presented, they were payable in specie or not.

In 1810, the State of South Carolina incorporated "The Union Bank," and inserted in that charter the same 16th section.

In 1810, the same year, the State of South Carolina incorporated "The Planters and Mechanics' Bank." In the original charter, either by mistake or for some other cause, this 16th section was not inserted; but in the next year,

1811, an addition to the charter was made, by which this 16th section was inserted. In 1812 the Bank of the State of South Carolina, the one that has come in question here, was incorporated with this same 16th section inserted in its charter.

There is still another private bank which remains to be added: that is "The Bank of South Carolina." Not the Bank of the *State* of South Carolina, the one in question, but the Bank of South Carolina.

That bank was incorporated in 1801, the earliest of all the banks. This 16th section was not inserted in its original charter, but its charter was renewed and extended in 1832, and this 16th section was then inserted therein: so that there were four private banks and one bank belonging exclusively to the State chartered between 1801 and 1812 inclusive, in each of which charters this 16th section existed in 1843, when the act of that year was passed.

Now we come to another class of acts. Between 1831 and 1836 inclusive, the State of South Carolina chartered seven private banks. Extracts from their charters, together with their dates, will be found in the little pamphlet, which we have printed, entitled "*Extracts from the Statutes of South Carolina*," pp. 15–17.

The State at this time had changed its policy. It inserted the 16th section, but with a qualification; and I desire to read it, because I shall have occasion to use it in argument hereafter. The first of these banks (on p. 15 of this pamphlet) is called "The Commercial Bank of Columbia, South Carolina. The 19th section of the charter of this bank provides, "that the bills or notes of the said corporation, originally made payable on demand, or which shall have became payable in gold or silver current coin, shall be receivable by the treasurers, tax-collectors, solicitors, and other public officers, in all payments for taxes or other moneys due to the State, *so long as* the said bank shall pay gold and silver coin for their bills." And then it goes on further to provide—and your honors will see the materiality of that presently—"that whenever there shall

be a protest on any of the bills or notes of the said bank for non-payment of specie, *the Comptroller General shall be authorized, and he is hereby required, to countermand the receipt of the bills and notes of the said bank in payment of taxes or debts due to the State, unless good and satisfactory cause shall be* SHOWN HIM *by the said corporation for protesting in a court of justice the payment thereof.*"

That is contained in all these seven charters, though more shortly in the last one, which was the charter of a bank which seems to have been created by different States, in connection with railroad purposes. Whether it ever went into operation, I do not know.

The Court now perceives what the relations of this State of South Carolina had to all the banks of the State when the act of 1843 was passed; and although those relations were not uniform, there being the diversity which has already appeared, yet they were complete and perfectly defined, though divided into two classes: in the charter of one of which there was an absolute promise to receive their bills; in the charter of the other class there was only a conditional promise, and a provision made for ascertainment of the breach of that condition to pay specie, and for the interposition of the Comptroller General to ascertain the breach and forbid his subordinates to receive the bills.

Now, the question which arises here is whether it was the intention of the Legislature of South Carolina by this clause of the act of 1843, so often repeated, to change these relations between the State and its banks—between the State and all of them, or between the State and some part of them—*and if some part, what part?*

Before I proceed to closely examine this question upon the elements which particularly belong to it, I must ask the attention of the Court to the history of this act of 1843, which is relied upon as *the repealing law.*

It had been the practice of the State of South Carolina for a great many years—how long I have not looked particularly to see, but certainly as far back as 1812 and down to 1843—it had been the practice of this State to pass an-

nually what was called a "supply act;" and always, down to 1843, that supply act, besides enacting out what subjects were to be taxed and at what rate each species of property or each occupation was to be taxed, went on to provide in what medium the tax should be paid, what officers were to collect the taxes, and to make a variety of provisions connected with the collection of the public revenue. That was repeated year after year, in each one of these supply acts, until we come down to 1843; and from 1826 down to 1843, except for the year 1837, each of these supply acts had contained *this phrase*, which is now so much relied upon: "*Bills of the specie-paying banks of this State.*"

Now, what was done in 1843? Why, apparently the Legislature had become satisfied that both they and the State printer were doing a great deal of useless work, that to re-enact over and over again, year after year, these details connected with the collection of the revenue was not a profitable occupation; that it was unnecessary and inexpedient and costly, and therefore they took the supply act of 1842 and cut it into two parts. They took one part, which had reference wholly to what property should be taxed and what rates of taxation should be levied thereon, and enacted that into *a supply act for that year*. The other part they enacted into a permanent law; and that other part included this phrase, which had been annually repeated for sixteen years in each supply act, and is so much relied upon. That is the history of this law of 1843.

Now, let us look at these annual supply acts, which were passed from year to year down to 1843. We find this phrase, "bills of the specie-paying banks of this State," in every one of them, with one exception. That exception occurs in 1837, and is found at the top of page 23 of our little pamphlet. And the obvious reason for this variation is, that the banks, except the Bank of the State of South Carolina, being then in suspension, to have used the stereotyped phrase "the specie-paying banks of this State," would not have described the banks whose bills were intended to be received, and therefore at that time the language was

changed. The State intended to receive the bills of all banks of the State unless, besides refusal to pay specie, a bank was, in the opinion of the Comptroller General, "unsafe."

I understand, by looking at the brief of the learned counsel and from what has fallen from him here, that he does not insist that this stereotyped legislative phrase of the annual acts had the effect to interfere in any way with the charters of any of the banks. He says there is a distinction between an annual act and a permanent act, and unquestionably there are very important distinctions between them. But if a legislature, year after year, employs *precisely the same phraseology concerning precisely the same subject-matter, from* 1826 *to* 1843, and in 1843 the legislature makes a mere transposition of the parts of its previous enactments, is it to be said they did not mean in 1843 what they meant in 1826, and so down to 1843? I am wholly at a loss to know why.

But, may it please your honors, I do not intend to rest upon any concession made by the learned counsel, and the court, I suppose, would not choose to rest its opinion upon any concession, that when the Legislature, year after year, used this phrase, they did not intend to repeal the 16th section of either of these charters. I do not rest on any concession of counsel, I say, that when you look at the conduct of the Legislature, it is impossible to believe that they intended by this provision in the annual supply acts to interfere with all their charters or either of them; because, may it please your honors, between 1826 and 1843, when each one of these private banks, whose charter contained the 16th section unqualified, and among others the "Bank of the State of South Carolina," now in question, whose charter contained the same 16th section—each one of them was renewed in some one year when the Legislature was employing this phraseology in its annual supply act. In one act, namely, the annual supply act, the Legislature directed that "the bills of the specie-paying banks of this State should be received," and in other acts, passed by the

same Legislature at the same sessions, the promise of the State to receive the bills of four private banks and this Bank of the State were renewed without qualifications. How is it possible to conceive that any legislature should have intended by this phrase to alter these promises, or modify them in any respect, when each one of these promises was repeated at the same session when this phrase was used?

I must ask your honors' attention to that settled rule, that where it is asserted that a conflict exists between two acts of the legislature, the later by implication repeals or modifies the former. This result is not to follow, if by any interpretation, which it is reasonably possible to put upon either act, they can be reconciled. It is not the case of an act standing alone, and being presented to the court to form the best and most reasonable interpretation the court can concerning that single law. That is not this case. The case is of an alleged conflict between two laws, each of which stands on the statute book, each of which may rightfully be considered as operative until the court is satisfied that by no reasonable possibility can they be reconciled. What we are to look for here, (and I conceive that that was the mistake which I fell into in the former argument, that I did not sufficiently point out this difference,) is not what would be the most reasonable interpretation of the act of 1843, if there had been no prior legislation touching the same subject-matter in the same words; nor what would be the most reasonable interpretation of that law if it stood alone, without the promise of the State in the 16th section.

It does not stand alone. The promise of the State exists in the 16th section, and the previous legislation of the State on the same subject-matter, and in the same words, had existed from 1826 to 1843. We are to look, then, I submit, to see whether *any* interpretation of this act of 1843 is reasonably possible, which will reconcile it with the provisions of the charters of the banks. That I understand to be the rule laid down by this court in repeated

instances, one or two cases as late as the 10th of Wallace; one, I remember, in which Mr. Justice Field gave the opinion; in the other, a little more recent, Mr. Justice Strong gave the opinion.

Mr. Justice CLIFFORD. You have mentioned that there was an act incorporating these banks. Is that act in the extracts?

Mr. CURTIS. Which banks does your honor refer to: the seven private banks?

Mr. Justice CLIFFORD. Yes, sir.

Mr. CURTIS. They are all in the paper. I do not mean that the entire acts of incorporation are there, but the section in the act relating to this subject-matter are given. They begin on the 15th page and end on the 17th.

Mr. Justice MILLER. I understood you to state just now that in the same year that this provision of 1843 was made, which is claimed to be a repeal of the act of 1812, these four or five banks were rechartered with the same 16th section in them. Did I understand you aright?

Mr. CURTIS. No, sir. What I said was, that between 1826, when the Legislature began to use this phraseology, "bills of the specie-paying banks of this State"—between 1826 and 1843 all these banks were rechartered; and as these were annual acts, the Legislature was using this language every year, while they were renewing the promises contained in the 16th section. They used it in the years when they rechartered these banks or extended their charters. I do not say that any fell in 1843, but they fell along between 1826 and 1843.

Mr. Justice MILLER. Then the statement is, that between that time and 1843, while the same phrase was inserted in the annual supply acts, these banks were rechartered.

Mr. CURTIS. Yes, sir. Not rechartered strictly, but their charters extended—declared to be in full force for another term of years.

Mr. Justice MILLER. That provision was re-enacted?

Mr. CURTIS. That provision of the 16th section and all provisions were re-enacted, and there was one of the banks,

which was chartered in 1801, which did not have this provision inserted in its original charter. That was the Bank of South Carolina. But in 1832 its charter was extended, and then this section was inserted, and of course the annual supply act was enacted that year.

Mr. Justice CLIFFORD. Can you give us a reference to the statute extending it?

Mr. CURTIS. I will do so, although I have it not at this moment. I intend to lay a report of my argument before your honors, and I will insert that reference. (See acts to renew charter of Bank of South Carolina, 8 Stats. at Large, p. 66, December 20, 1832.)

I return to the inquiry, is there any necessity to place upon these terms, "the bills of the specie-paying banks of this State," the meaning attributed to them by the plaintiff in error. He very skillfully assumes that they admit of but one meaning, and that that meaning is perfectly plain; and he says that the counsel for the plaintiff in error undertake to say, upon various extraneous grounds, *that the Legislature did not mean what they have said.*

Well, may it please your honors, it is a little remarkable that the very first step which that learned counsel takes upon this part of the subject is to assert that the Legislature did not mean what they have said.

He says they did not mean to take away this privilege from any private banks secured to each of them by its charter, and cannot be supposed to have intended to do so. Well, did not they say that concerning these private banks just as clearly as they said it concerning their own Bank, if they said it at all?

It is *he* who asserts the Legislature cannot be understood to have meant what they said, and not *we*. What do we say the Legislature meant? What is our exposition of those words? for the court undoubtedly may call upon us for some exposition—some exposition which is possible to be received, so that these statutes can be reconciled. Our exposition is this: that the words mean what they naturally import. "*The* specie-paying banks of this State" is

a general term, which includes those banks which were specie-paying banks *at the time when that general term was used.* That is what the Legislature meant, and all they had any occasion to mean. That everything else was fixed by the charters of the banks is what they meant in their annual supply acts. They were, in fact, specie-paying banks. They were rightly described by that name. They were specie-paying banks, all of them, in 1843, when this general term was used. And the Legislature, we submit, meant the same thing as if they had said, extending the idea and expressing it fully, "the specie-paying banks of this State, to wit, the Bank of the State of South Carolina, the Bank of the State, the Bank of South Carolina, and so on, enumerating the different banks. As your honors will find, if you choose to look back to 1812, they did enumerate banks. They afterwards adopted the shorter phraseology, and said "banks of this State." In 1826 they adopted the phrase which is now commented upon, "the specie-paying banks of this State." And it correctly described all of them with whom the State had relations by the charter of each, defining their respective rights, to have their respective bills received by the State. And it described them in such a way as to be in perfect harmony with the relation which I have shown existed between the State and every one of these banks. Construe it in that way, and everything is harmonious; construe it in any other way, and the difficulties are immense.

So that the true construction of this phrase is, "the bills of the specie-paying banks of this State, in conformity with their respective charters," which had settled every part of this question as between the banks or the holders of their bills and the State. So far from their being in conflict here, it is the proper termination of the section containing these words, to understand, as inserted therein, "in conformity with extending laws," or "in conformity with the several charters of the banks." This is not only a possible, but it is the most natural and reasonable, interpretation.

There is another argument which strikes my mind with a good deal of force why this section cannot be construed in the manner contended for by Mr. Chamberlain; and that is, that it does not say what he attributes to it. Certainly it does not say in terms that the bills of this bank shall be received for taxes so long and no longer than it continues to pay specie. It does not say that. But the Legislature of South Carolina not only knew how to say that in 1843, but they had said it over and over again seven times in reference to the seven banks which they had chartered between 1831 and 1836. There your honors will find that when the Legislature meant that the State should cease to take bills of a bank when they should refuse specie payment of its bills, they said so: "So long as bills are redeemed in specie."

And what is more important still in my apprehension is this, that this act of 1843, in this part of it, contains no means to carry this alleged intention to have the tax collectors refuse to receive bills into practical effect; whereas the appropriate means of carrying such an intention into practical effect was not only known to the Legislature of South Carolina, but had become a formula in its legislation.

Mr. Justice BRADLEY. At what page of the pamphlet will be found the language which you say is used by the Legislature in reference to those banks which were chartered after 1831?

Mr. CURTIS. Page 15 is the first instance: "*So long as* the said Bank shall pay gold and silver current coin for their notes; but whenever there shall be a protest of any of the bills"—and then follows the provision for the interposition of the Comptroller General. The language may vary a little in reference to the seven banks, and I think it does, but in substance it will be found that the idea is fully and clearly expressed. It is not left to any implication whatsoever.

But what I was coming to, and I attach even greater importance to it, is, the Legislature has not said this in the act of 1843. They knew how to say it, and they did say it

when they intended it. When they intended, so long and no longer, they said it. But I was suggesting that *there are no practical means provided in the act of* 1843 *to carry this alleged intention into effect;* while at the same time the Legislature was perfectly well acquainted with such practical means, and with the necessity of employing them, and had made an express provision for employing them when they entertained such an intention. That will be found in the case of all these seven banks, and will be found when the Legislature renewed the charters of the four private banks in 1852 and 1853, and cut down their privilege of having their bills received for taxes to the time while they paid specie. Because in all these cases they have provided that if a bank suffers its bills to go to protest, the *Comptroller General of the State is to interpose and give instruction to the tax collectors.*

It is said here that this act of 1843 was addressed to tax collectors—of course scattered all over the State, in every parish, I suppose. Now, it is not a plain thing for every tax collector in every parish in South Carolina, even if fully informed of the facts, to determine whether a bank does or does not come within the category of a specie-paying bank. He was not put into office for any such purpose, or with the qualifications necessary to attain it. It is not easy for anybody, under some circumstances, to say how that phrase would apply. Suppose a bank redeems its bills, but does not pay its depositors, as all our banks have been doing within recent human memory—I believe very few of the banks of the country, during the recent troubles, have refused to redeem their bills—that would have forfeited their charters. But they have not paid their depositors. Now, is a bank which has not had its bills go to protest, but does not pay its depositors, a specie-paying bank or not? Suppose a bank has allowed its bills to go to protest, but it did so, not because it was not able to pay them, but because it denied its liability to pay them: what is to be done with such a case? It is to be legislated about. The difficulty is to be got rid of as it is got

rid of by the Legislature of South Carolina; and so is the difficulty in regard to the impropriety of remitting questions of this kind to every tax collector in every parish in the State, liable to all sorts of conflicting decisions, right and wrong.

When the Legislature meant to have the privilege of a bank, to have its bills paid for taxes suspended, they provided the proper machinery. They said, the Comptroller General of this State is to ascertain and find the facts, and he is to instruct his subordinate officers accordingly. Now, where do you find any such machinery in the act of 1843? And could the Legislature have intended by that bald phrase, "Specie-paying banks of this State," to insert what they have taken so much pains in all these other cases to say expressly, "so long as they pay specie," and also to commit this whole subject to this class of tax-gatherers, to whom it is said that the act of 1843 is addressed?

I now desire to turn to one or two other topics quite disconnected to this which I have been recently discussing. And one is, the effect of the recharter of this Bank in 1852. The language of this act it is important, I think, that the court should advert to. It will be found on page 11 of our pamphlet, and is entitled "An act to extend the charter of the Bank of the State of South Carolina," and it enacts that the present charter of the Bank is hereby extended.

Now, the argument on the other side is, that this act of 1843, though it in no way refers to this charter in terms, is to be construed in such a way as to modify, and not repeal; because, manifestly, it did not repeal the 16th section. The 16th section had reference to the reception of these bills, not for taxes, but for all public dues of the State.

They say it modified that 16th section *by implication*. Is it to be supposed that if this rested on such an implication—if this modification rested down to this time on such a modification as that—that when they came to recharter this Bank they would have said, "We extend the charter;" or would they have said, "We extend it as heretofore modified?" Instead of that, they say they extend the charter.

They do modify it in one or two particulars expressly; but they say nothing about the act of 1843, or anything contained in it.

Now, the use I desire to make of the act of 1857, being the annual supply act, is in connection with this recharter of this Bank. *When the Legislature did intend to alter a charter, as they did intend when the private banks came to have their charters extended*, THEY SAID SO. They said, "We extend your charter, but we modify it in this respect." And that was said in every one of these cases. They say, "We put you on the same footing as the seven banks chartered between 1831 and 1836."

Now, in 1852 this charter was renewed. And we say, with the 16th section in it, and not modified. The other charters of all the other banks either originally provided that a suspension of specie payment should take away the privilege from their bills, or that had been engrafted on their charters before 1857. So that this Bank of the State was the only bank, according to our construction, which had this 16th section in its charter when this annual act of 1857 was passed. And accordingly that annual act of 1857 makes a distinction between this Bank and all other banks. It says the bills of this Bank are to be received, but not the bills of other banks, unless they pay specie. That legislation was in precise accordance with the relations of the State to all these banks, both to the Bank of the State and all others in the State. No one of them, except the Bank of the State, at that time had any right to require its bills to be received, provided they should suspend specie payment, and provided the fact should be ascertained in the manner the Legislature required it—by the Comptroller General.

There is another piece of legislation here, which confirms this view, that the 16th section of the charter was not modified by the act of 1843. This charter of the Bank of the State had been twice extended. It was extended before the expiration of the first twenty years, in 1832, and it was extended in advance of its expiration at the

second term, in 1852. The charter, I beg you to observe, had been twice extended. The 16th section had been originally enacted in the charter, and then, by each of these two subsequent acts, that 16th section had been continued in force with the rest of the charter.

I now beg your honors to look at the repealing act, that which is undoubtedly a repealing act, for it says so. It will be found on page 12, and was passed in 1868. Its language is, "That the 16th section of the act ratified the 19th day of December, 1812, entitled 'an act to establish a bank on behalf of and for the benefit of the State,' and all acts and parts of acts which render the bills of said corporation receivable in payment of taxes and all other debts due to the State be, and the same are hereby, repealed.'" What other acts besides the 16th section? Why, the two extensions of the charter. They are the only acts which could bear upon this, and yet they undertook to repeal, in order to destroy this privilege, not merely the 16th section in the charter, which they specifically describe and enumerate, but all other acts and parts of acts by which this privilege was enjoyed.

I submit, this shows that the Legislature, by this second extension of the charter, as well as by the first, extended this privilege and kept it in being, and therefore it was necessary to repeal that as well as the 16th section, and they did it.

It cannot have escaped the attention of the court that this is not *ordinary* legislation, which is ascribed to the Legislature of South Carolina by the act of 1843. Ordinary legislation is submitted to a court for construction; and if it is obscure, as it too often is, the court put the best interpretation upon it they can. But this is legislation, may it please your honors, to give notice to the world of the withdrawal by the State of South Carolina of its guarantee of the bills of its own Bank. It is not *ordinary* legislation; it is legislation concerning which every citizen of South Carolina, or elsewhere, who is in the way to take those bills, had a right to expect that this State, in

the most ordinary good faith, would leave no room for misunderstanding; that the State should leave no room for doubt that it clearly intended to withdraw the guarantee. Can it be believed that the Legislature of South Carolina, after employing this legislative phrase, year after year, from 1826 down to 1843, and then cutting the annual supply act into two parts, and enacting one part as an annual supply act and the other as a permanent law, meant by that transfer to change the whole character and effect of this language, and have the whole world understand that they meant thereby to withdraw the guaranty of the State from the bills of the bank of the State? Why, what was the duty of the State; what was the constitutional duty of the State, if they had such intention? I agree they could withdraw the guaranty on proper notice; but it is to affect the future and not the past. They could not affect those who held bills prior to the act of 1843, if that Bank should have failed before these bills were presented for taxes. They had no power to do that; and yet, if the interpretation contended for is put upon this language, they tried to do it, for it applies instantly if it applies at all, and it applies to all bills already issued, as well as those to be issued; which is a thing it will not be maintained that the Legislature could have intended, because it is not only bad faith, but it would be a breach of their constitutional obligation.

Something has been said here, may it please your honors, concerning the authority of the decisions made by the Court of Errors of South Carolina originally, in one of the cases, and the present Supreme Court in the other case. Of course the decisions of the State courts, which come here for review on constitutional questions, are of no authority. They may be entitled to more or less weight; that depends on their reasoning. The learned counsel attributes great weight and importance to them here, because, he says, we rely on other legislation, and we rely on the policy of the State, and we rely on a variety of facts, which are not collateral, to be sure, which are part of the subject-matter

involved, but yet which are facts either in the history of the State or its legislation.

Now, he says, these courts below understood these things perfectly. Well, I do not know, and I suppose your honors will find you have no means of knowing, whether they have this superior knowledge; for they have not adverted to any one of these subjects to the extent of a single line, and for aught that appears no one of those suggestions, considerations, or inquiries now made or raised have occurred to the minds of any one of the judges concerned in the decision of these cases, or been at all considered by any one of them.

Supreme Court of the United States.

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ARGUMENT OF A. G. MAGRATH,

Counsel for Plaintiffs in Error.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

ARGUMENT.

I have to discuss, may it please your honors, the question whether the 16th section of the act of 1812 is repealed by the act of the Legislature of 1843.

I shall not occupy the attention of your honors long, first, because I think the question demands condensed discussion, and next, because my physical ability will scarcely enable me to speak at much length.

I will ask, first, what was the Bank of the State of South Carolina? The answer is, it was a bank, with its capital the funds of the State of South Carolina; and the capital of the Bank guaranteed by the State of South Carolina.

By special provisions also, for all the debts of that Bank, the State of South Carolina was liable.

The 16th section of the charter of that Bank provides, that "the bills or notes of the said corporation, originally made payable, or which shall become payable, on demand, in gold or silver coin, shall be receivable at the treasury of the State, either at Charleston or Columbia, and by all tax collectors and other public officers, in all payments for taxes and other moneys due the State."

The section of the act of 1843, (found on the 2d page of printed brief,) by which it is said this section is repealed, is entitled "an act prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes," and these words occur in the 1st section of the act:

"All taxes for the use and service of the State shall be paid in specie, paper medium, or the notes of the specie-paying banks of this State."

These words my friend on the other side will contend

repeal so much of the charter of the Bank of the State as makes the bills of that corporation receivable for taxes.

Now, I beg your honors to observe, that the rejection of the bills of this Bank, according to the terms of the act of 1843, rests upon the assumption that the notes are not paid in specie, and according to the charter of the Bank, the State thereupon becomes liable itself for the redemption of these very notes.

Your honors are asked to consider the question of repeal by implication; and of course intention must enter very largely, as an element, into the consideration of this question. But the ground so taken by my friend involves the startling proposition, that the very circumstance upon which it is claimed that these notes are not receivable for taxes, is that condition upon which the State itself becomes bound to redeem these notes in specie. Now, there is reason in all laws. The foundation of every enactment is the *reason* that is supposed to have been presented to the Legislature for the enactment.

Can your honors conceive a reason that would be operative upon the mind of the Legislature to reject the bills of the Bank of the State, if not paid in specie, when the rejection of the bills on that ground made the State itself liable for their redemption in specie?

My friend on the other side says that the attention of the State was particularly directed to taxes. So it was, but not at all in the sense in which he would represent it to your honors; for in the case, in 8 Wallace, of Furman *v.* Nichol, the receivability of the bills of the Bank of the State of Tennessee for taxes was a pregnant consideration present to the mind of the court, because it was the source of profit to the State of Tennessee.

There is, therefore, not only a liability that would immediately arise upon the State to redeem those bills, but there is in this rejection—this cutting off that source of profit to the Bank, and through the Bank to the State—that in Furman *v.* Nichol was most prominently and forcibly present-

ed, as carrying with it great weight in the judgment of the court.

Next, the words of the act of 1843 your honors will find repeated, with the single exception of one single year, from 1826 down to 1843. In 1826 the language of the act to raise supplies was, "taxes to be paid in specie, paper medium, or the notes of specie-paying banks of the State." So in the act of 1827; so in the act of 1828; so in the act of 1829; so in the acts of 1830, '31, '32, '33, '34, '35, '36. Changed in 1837. Renewed in 1838, '39, '40, '41, '42, '43.

Your honors will thus see that these special terms, so much relied upon by my friend to show that in 1843 the Legislature of South Carolina intended to repeal the receivability of the bills for taxes, were a stereotyped phrase in use in that State from 1826 to 1843. If these words operated as a repeal in 1843, why did they not also repeal the section in 1826? If the language used in 1843 took away from this bank this privilege, did it not take it away in 1826, in 1827, in 1828, in 1829, in 1830, and so on up to 1843? My friend says no; that the acts of 1826 and those acts up to 1843 were annual acts, and that the act of 1843 was a continuing act.

The question is not whether the act of 1826 was a continuing act or an annual act, or whether the act of 1843 was a continual act or an annual act; but what was the meaning of those terms in 1826, and in what in 1826 could the meaning differ from 1843.

It seems to me, may it please your honors, that to get rid of the difficulty in this case by the suggestion that these acts were for so many years annual acts, and meant *nothing*, but that the same terms used in an act passed in 1843 meant every thing, is a proposition that scarcely needs any other reply than I have given to it.

But again: In 1826, and so on to 1843, and from 1801 and previous to 1812, there were three other private banks in South Carolina which had precisely the same words in their charters that are found in the charter of the Bank of the State.

The Union Bank of South Carolina, the State Bank, (not the Bank of the State,) and the Planters and Mechanics' Bank, were all banks chartered previous to 1812, when the Bank of the State was chartered; each one of them had in their charter precisely the same words that are found in the 16th section of the act of 1812—the charter of the Bank of the State.

My friend says, that up to 1843 the bills of these three banks had to be receivable; nay, up to 1852, according to his amended brief. Why? Because they were in the charter; they were a part of the contract.

This section, which is the 16th in the act of 1812, was thus an independent section in three other private banks that were existing at that time.

Will you say that the State intended to repeal the receivability of bills for taxes of its own Bank, but yet would concede to those three other banks a privilege that it so denied to its own? It seems to me that the argument carries with it its own refutation, when it is necessary to subordinate this Bank—the State's Bank, the State itself—to other private corporations.

So far as my friend goes, he admits that these same words in the case of three private banks are not repealed by the act of 1843, and cannot be repealed by that act. Then upon what ground are the same words in the act of 1812 to be presumed to be repealed by the act of 1843? How is this objection to his conclusion to be met? Will he say that the terms used in the act of 1826, though the same as in the act of 1843, are to be construed differently? Will he say that the terms used in the act of 1812, though the same as used in other charters of private corporations, shall be construed differently? Certainly not. Certainly no reason can be shown for the distinction.

What is made the test—what is the reason—why is it, it is claimed that the attention of the State of South Carolina is drawn so positively to the act of 1812, and by repeal of the 16th section, as is contended, by the act of 1843? Be-

cause of the desire that the State had that the avails it received for taxes should be paid in specie.

Now, listen to the argument—I undertake to state it according to its legal effect. It is that the State in 1843 was bound to receive the bills of three banks for its taxes, attached to which bills there was no guarantee, except that of a private corporation, for their ultimate redemption—no security except the assets of the corporation; while it would refuse to receive its own bills, although by the act of 1812 it stood bound and obliged to redeem these bills in circulation, and to redeem them in specie.

Now, let us see how far this question about specie was a pregnant matter in the minds of the Legislature.

In 1839, as your honors will find in the brief, every bank in the State of South Carolina suspended specie payment except the Bank of the State and the Bank of Charleston.

The State of South Carolina, then, had it in its power to put its hands upon those banks. What did it do? Did it say, "Take away the charter?" In the case of the Planters and Mechanics' Bank, the State Bank, or the Union Bank, did it deal with them as it is contended it did with the Bank of the State in 1843, when that Bank had not suspended? The suspension was in 1839, and in 1840 the State legislated upon the subject of the suspension.

Why, may it please your honors, in the act of that year it did not attach any other condition to the charter, as they were then existing, except these two, that the banks should pay to the State an interest of five per cent. on the circulation, and should make certain returns to the Comptroller General.

Three banks, mark you, at that particular time, stood, according to the decisions of the courts of the State, with their charters subject to the control of the Legislature—the Legislature able to take away the charters upon [illegible]ation in a court of justice; yet no proceedings whatever were directed by the State against these banks, except that which I have stated to you; that is, to pay five per cent. on the

circulation while they were in a state of suspension, and to make return to the Comptroller General.

But your honors will bear in mind that the first banks were chartered in South Carolina in 1801. Before that time there were certain contracts or engagements—securities for money, if you choose to call them—that were receivable for taxes. The Bank of South Carolina was a private copartnership, the State Bank was a private copartnership, prior to the incorporation of these two, when charters were given to them in the early part of 1800; but when those two banks, then in embryo, but still copartnerships, in the State of South Carolina, their bills were made receivable for taxes, precisely as they were ofterwards incorporated and chartered as banks.

Now let me ask you to consider this: In 1813, in the midst of the war, with suffering everywhere, the year after the charter was given to the Bank of the State of South Carolina, this is the provision of the law:

"That the tax collectors throughout this State shall receive no payment of taxes but in gold or silver coin, made current in the State, the paper medium issued under the authority of the Legislature, bank paper redeemable in the first instance in gold and silver at the Bank of South Carolina, the State Bank, Union Bank, the Planters and Mechanics' Bank, the Bank of the State of South Carolina, or certificates for the payment of members of the Legislature, or the solicitors for their attendance on the Legislature."

Is there in this provision any thing less "imperative and decisive" than in the act of 1843?

That was in 1813. Does any body believe that by any one in the State of South Carolina it was accepted that this provision of the act of 1813, as to the manner taxes were to be paid, meant the bills of these banks should only be received if paid in specie?

This is the language not only in 1813, but your honors will find it previous to 1800: going back to that time when the Bank of South Carolina and the State Bank were private copartnerships, and the notes of that private copart-

nership made receivable for taxes precisely according to the terms of this act.

Your honors will now allow me to draw your attention, for a moment, to the principle upon which this Bank of the State was organized, and to the causes that led to its creation.

I will not take up the time allotted to the plaintiff in error by reading from the Bank Compilation. It is before your honors, and in the introduction of that book you will find a statement from the records of the causes which led to the creation of the Bank of the State and the purposes for which it was intended.

There was no specie then upon which, as a capital, the Bank could be put in operation. There was no specie in the land by which the bills could be redeemed, and the State organized this Bank and put it into operation for the purpose of relieving the wants of the community. How? In providing a circulation that was to be a substitute for specie, behind which the guarantee of the State was written, and the faith of the State pledged for the redemption of its bills.

Now, may it please your honors, this is no idle statement. It has given occasion for the pithy and forcible remark, that the Bank was born in a state of suspension.

After the passage of the act of 1840 several of the banks of the State of South Carolina, the Bank of South Carolina, and the State Bank refused to admit that suspension was cause of forfeiture. The court held that it was. But we find this language in the opinion of Chancellor Johnson, the oldest magistrate in the State of South Carolina at that time, one who had grown up with the State, whose fortunes were bound up with it, and whose knowledge was the knowledge of everything that existed in the State. He says:

"Counsel have indulged in speculation as to the unreasonableness of expecting that the Legislature would incorporate a bank with the privilege, expressed or understood, of not paying their bills in specie." "I refer," says the

judge, "to the act incorporating the Bank of the State of South Carolina, (8 Stats. at Large, 24,) where it will be found that its capital consisted entirely of public stocks.

"That, however, was a momentous crisis, when all the banks in the country were suspended, and was no doubt justifiable; but with the policy of a contract made with the State this court has had nothing to do. All that is expected—all that court can do—is to declare the law of the contract.

"The State, while she exacts only the reasonable performance of the obligations to her, never repudiates her own."

This was in 1843.

The illustration of this learned Judge, so far as receivability of taxes is concerned, the Attorney General concedes, extended at that time to three private corporations.

But if there lives within the limits of the State of South Carolina any one who ever heard, until this question was raised after the war, that the State was not liable for the bills of the Bank of the State, and that the bills of the Bank of the State were not receivable for taxes due to the State, I have never met him.

But, more than this: in 1843 the Bank of the State of South Carolina was threatened with an effort, that it was apprehended might be successful, to wind it up and close its operations. Your honors will find in the brief a reference to and extracts from the correspondence with Hambro & Son and with other bankers in Europe, in which you will find it broadly stated, that in the continuance of that Bank was involved the credit of the State; and that the State could not do an act that would recall its charter, without being therein guilty of an act that would involve a breach of faith to the public creditor.

Now, may it please your honors, I will go on a little further. I have shown you what was the condition of things in 1843. I come now to the year 1852. All the bank charters in the State of South Carolina had then expired, or were about to expire. They all became vacated in 1852 or 1853. These banks were of course the Planters and Mechanics' Bank and the Union Bank of South Carolina—

two of the three banks which my friend concedes had a right up to 1852 to have their bills received for taxes. In 1852, therefore, the State was considering the recharter of the Planters and Mechanics' Bank, the Union Bank, and the Commercial Bank of Columbia; and it was then also incorporating, for the first time, the Exchange Bank and some seven or eight other banks. That was in 1852. Then in all of these charters or renewals in 1852 the State said: "Bills or notes of the said bank shall be receivable by the treasurers, tax collectors, and all other public officers in payment for taxes and other moneys due to the State no longer than while the said bank shall promptly pay on demand gold and silver current coin for their notes. But whenever the said bank shall refuse and delay to pay any of their notes in gold or silver current coin, or whenever there shall be a protest on any of the bills or notes of the said bank for non-payment in specie, it shall be the duty of the Comptroller General to forbid the receipt of the bills or notes of the said bank for taxes and other public dues, unless satisfactory reasons be shown him by the said bank for contesting in a court of justice the payment of such prohibited bills or notes."

The bank charters renewed in 1853 contained the same provisions.

And that was the act that gave continued vitality to the three banks that, according to my friend, had the right, up to 1852, to make their bills, payable only in gold or silver, receivable in payment of taxes.

Now, mark the difference. In 1852 the charter of the Bank of the State was also renewed, and in that charter, renewed in 1852, there is no such corresponding provision as I have read to you from the act of 1852 in relation to all the other banks in the State of South Carolina. Nay, more: there is not in the act of 1852 any reference made to the condition, express or implied, that the Bank of the State of South Carolina should accept the provisions of the act of 1840 in relation to specie payments.

Now, is the court to be asked to believe that if the act

of 1843 was known to the Legislature in the sense now contended for by the State and of force in 1852, that no reference whatever would be made to that act of 1843? Is the court to be made to believe, upon so misty and shadowy an argument, that if this doubtful act of 1843 applied to the Bank of the State in the act of 1852, where you would naturally look for some reference to it; where you would look for some reference to it concerning the Bank of the State, there is no such declaration there—no reference made to the condition of the Bank? If the "abundant caution" which the Attorney General called afterwards for the express repeal in 1868, would you expect it to be wholly wanting in 1852? In 1857 the banks of the State suspended, the Bank of the State among the number.

In that year the Legislature of South Carolina declared that taxes should be paid only in notes of the Bank of the State, or of specie-paying banks of the State, or of coin of the United States. These were declared to be receivable in payment of taxes.

Now, in 1857, when all the banks were in a state of suspension, the notes of the Bank of the State only, by express enactment and explicit declaration, should be receivable in payment of taxes.

My friend says this shows that it was included in the act of 1843, or it would then have been excepted therefrom.

What will you say when you come to 1868, and there read from the acts of the Legislature of South Carolina the declaration that then the 16th section of the charter of the Bank of the State of South Carolina shall be, and is hereby, repealed. "*Hereby*," by the act of 1868. Need I do more than quote what was said by one of the judges of this court in the case of Furman *v.* Nichols, and apply it to this case, with the alteration of dates? If repealed in 1843, why was it expressed repealed *in* 1868? How can you say it was repealed previous to 1868 and in 1843?

My friend says that this was put in this section in the act of 1868 through abundant caution. Did all caution

belong to the Legislature in 1868; none to the Legislature in 1843 or 1852? No, may it please your honors, it was put in from the doubt that existed, if indeed a question of even doubt was at all then present to the minds of those who held the power of the State of South Carolina, that there was any statute repealing the section of the 16th section of the charter in that Bank in 1812 that made the bills receivable for taxes.

I now wish to bring the attention of your honors to a matter which I think is full of interest and of large consequence in the discussion of this question.

In 1831 the State of South Carolina chartered the Commercial Bank of Columbia. Then for the first time will your honors find that which is the source of the true distinction between the bills of these several banks, and which, as I submit, has been overlooked by my friend. In 1831, in the charter of the Commercial Bank of Columbia, it was provided, "that the bills or notes of the said corporation, originally made payable on demand, or which shall have become payable in gold and silver current coin, shall be receivable by the treasurer, tax collectors, solicitors, and other public officers, in all payments for taxes and other moneys due to the State."

That was the clause in relation to the Bank of the State of South Carolina,—it was the clause in the charter of the Union Bank of South Carolina and in the State Bank,—that was the charter in the Planters and Mechanics' Bank, but the Legislature of 1831 added much to the terms used in the charter previous to that time, and, after the exact description of the kind of bills that were to be receivable for taxes, use these words: "As long as the said bank shall pay gold and silver current coin for their notes; but whenever there shall be a protest on any of the bills or notes of the said bank for non-payment of specie, the Comptroller General shall be authorized, and he is hereby required, to countermand the receipt of the bills or notes of the said bank in payment of taxes or debts due to the State, unless good and

satisfactory cause shall be shown for protesting in a court of justice the payment thereof."

Therefore, you see that in 1831, and so continuously up to the present time,—or rather up to 1852 and 1853,—in the new charter of every bank, where the bills or notes of the bank originally payable in specie, or which shall become payable in specie, are to be receivable for taxes, the Legislature go on to add these works: "As long as the said bills shall be paid in gold or silver." But in the charters granted to the private banks, to which I have referred, between 1801 and 1812, these or equivalent words were not used until 1852, when their charters were renewed. Can you incorporate that provision in the act of 1812? My friend concedes that you cannot do it in the act creating the charter of the Union Bank of South Carolina, the Planters and Mechanics' Bank, and the State Bank. If you cannot incorporate it into those charters, upon what argument is it that you are to take it up, body and soul, and transfer it into the act of 1812, and so make a judgment in this case that would be precisely the judgment that would be rendered if the charter of 1812 contained the provision that the bills shall be made receivable so long as they are paid in gold or silver.

This act of 1843 has an importance attached to it which it does not merit. I do not believe that more was intended by the act of 1843 than to abridge that long enumeration which was constantly found in the acts of supplies, and sometimes spread them out to great length. What could it be more than this? It could not prevail against a charter. It could not impair a contract that was in a charter. Shall it then be said that its only operation was against the Bank of the State—the Bank that was the idol of the State, the Bank to which the State turned constantly for relief, which stood at its right hand in every financial calamity?

Will you say that at that time, in 1843, when I tell you this Bank was engaged in a controversy as to the policy of continuing its existence, the State of South Carolina, then legislating the continuance of its existence, would

publish to the world that its bills were not receivable for taxes? Why do so? The profits at that time were abundant, large, already more than the capital which the State contributed; and when those who were opposed to the Bank said, "Let it be repealed," the friends of the Bank, and those who therefore claimed to be the friends of the State, said, "You cannot do it without a breach of public faith."

I have before me the Bank Compilation. What is it? It is a book which was compiled in obedience to the direction of the Legislature in 1848 to this effect.

This work, which is of great importance in this discussion, I refer to, not only for the proof of what I have said as the absence of all intention, on the part of the Legislature, in it to refer to the Bank of the State, but still more to show that even if such intention did exist, it conclusively shows that it was not made public in any proper manner.

In this Compilation is the proclamation of the State; the Compilation which the State passed out of its hands to go forth to the world, and inform that world, dealing with its bills, what were the engagements of the State of South Carolina with those who held its bills.

Would your honors believe, while listening to the argument in behalf of the State, that the act of 1843, which is relied upon as repealing the 16th section of the charter of 1812, is not to be found in this book at all? This Compilation was brought down to 1847 by authority of the Legislature. It was no casual omission to record the acts of 1843, because in the same book will be found other acts of 1843 incorporated in and made a part of it. And yet will your honors say that upon a great question of right and truth, when the Legislature in 1847 advertised the whole world that the act of 1843 had nothing to do with the 16th section of the act of 1812, that in 1868 or 1869 or 1870 it can go back and say that it qualified or repealed it? That proposition need not be argued.

But more than that. In 1865 the President of the Bank (who was cashier of this Bank in 1843) speaks in these

terms, and now I beg your honors' attention to this, because it is a question of law, in the first place, and a question of morals also.

In 1865 Mr. Furman, the President of the Bank, in his report to the Legislature, said:

"In connection with the subject of State revenue, it is proper to bring to your attention that the bills of the Bank of the State are receivable for taxes. If the taxes imposed at this session are paid in these bills, it is plain that the income of the State will not be available to meet its current expenditures."

There is no reference to the act of 1843 there.

"It may therefore be necessary either to direct that the taxes of this year shall only be paid in the currency of the United States, upon the ground of public necessities"—not that it was repealed—"or to require that any tax-payer who offers to pay the tax to be this year imposed with the bills of the Bank of the State shall at the same time pay taxes of the last year, which have not yet been generally collected, in the same medium. Such an arrangement would either occasion the tax to be paid in United States currency, or would so reduce the volume of bank currency as to make the bills available to the State as a medium of payment.

"This would also enable the State to settle advances made by the Bank without incurring a new obligation."

What is this proposition? That at this time, in 1865, when the President of the Bank said to the Legislature, "the bills of this Bank are receivable for taxes"—(presidents of banks are fertile in expedients)—he said:

"You must either deny it, on the ground of pressing public necessities, or you must require that two years' taxes shall be paid in the bills of this Bank; and if you get the two years' taxes paid in the bills of this Bank, then you reduce the volume of the circulation, enabling the State to use these bills for its own purposes, and pay back to the Bank the balance that it owes to the Bank."

Now, when my friend appeals to you, and asks you not to put back upon the State worthless, irredeemable currency, the fact is spread before you that that currency, if it be worthless and irredeemable, is because the State of

South Carolina has not observed its pledges, and that it has, sooner than take the bills of that Bank to pay back the advance that it owed to the State, preferred, by the act of 1865, to attempt, *manu forti*, to seize the whole assets of the Bank, and make it liable for the debts of the State.

But that is not all. My friend who sits near me was then the Attorney General of the State—the highest legal authority in the State—one whose opinion then was entitled to great weight, and the weight of whose opinion has been from that time gradually advancing and increasing, until it is now equal to the opinion of any one in the State of South Carolina.

In his official capacity he was required by the Legislature to give an opinion to that body concerning the Bank of the State. I read from his opinion in 1868.

"An examination of the 16th section of the act of 1812, already recited, which makes the bills of the Bank of the State receivable 'in all payments for taxes and other moneys due to the State,' will confirm this view, if additional confirmation is needed.

"It should be remembered that prior to the incorporation of the Bank of the State, the bills of other banks within the State were also receivable in the same manner for taxes and debts due the State; but when, subsequently to the chartering of the Bank of the State, the old banks applied to be rechartered, this provision was stricken out of their new charters, and the bills of the Bank of the State alone continued receivable for debts due the State. The bills of other banks were receivable only so long as they were redeemable in specie; but the bills of the Bank of the State were receivable as specie, whether redeemable in specie or not.

"Again, in 1857, by act of the Legislature, it was directed that 'tax collectors shall receive the taxes and other dues only in the notes of the Bank of the State, or of specie paying banks of this State, or in coin of the United States.' At this time (1857) not only had the other banks suspended specie payments, but the Bank of the State had suspended specie payments also; but notwithstanding the suspension, the act directs that the bills of the Bank of the State shall be receivable on the same basis as coin. The only possible grounds upon which

this act should have rested were, that the State was bound by the act of 1812 to receive the bills of the Bank of the State in payment of taxes, and being herself the guarantee of the Bank, she was compelled to receive her own bills in satisfaction of her own claims

"There are other arguments and other considerations which might be adduced to confirm the liability of the State for the bills of the Bank of the State and for its obligations; but it is not deemed necessary to spend more time upon this branch of the subject."

"If we have reference to the strict terms of the several acts of the Legislature already cited, to contemporaneous and subsequent construction by competent official authorities of such acts, or to the unbroken practice under such acts, we arrive at the same inevitable conclusion to wit: That the State by express language, by clear intention, and in reality, has made herself, in her own words, directly 'liable for and chargeable with' all the debts of the corporation known as the President and Directors of the Bank of the State of South Carolina."

The opinion of Mr. Furman adds to the weight of the opinion of Mr. Chamberlain, because the State was not only asked to take these bills in payment of taxes due to her, but was invited so to do by an arrangement which, with two dollars of the bills of the Bank of the State, she could pay, at a heavy discount, the advances due to the Bank.

This was in 1865; and in 1868 the Legislature of that year declared that the 16th section of the act ratified the 10th day of December, 1812, entitled an act to establish a bank in behalf of and for the benefit of the State, and all acts and parts of acts which render the bills of said corporation receivable in payment of taxes and all the debts to the State be, and the same are hereby, repealed. Repealed by the act of 1868; repealed by no other act, by no other clause of any other act that can, by any reasonable intendment, be made to refer to the bills of the Bank of the State.

Well, that is not all. The opinion of my friend the Attorney General did not rest simply upon its own showing, however strong that might be, but the Legislature appointed a committee of its own body to investigate into the affairs of this Bank, and here is what the committee say:

"The Bank, as before, continued throughout the war a corporate body, doing business in the name and on behalf of the State. It really and in fact had no independent existence from the State, but was wholly subject to and controlled by it. True, it had a legal entity for business purposes, but was really nothing more or less than the State engaged in banking business. The debts, therefore, of the Bank, created during as well as prior to the existence of the rebellion, were liabilities incurred in the name and on behalf of the State."

This was the report made to the Legislature in 1868; and doubtless upon that report was the act passed that year rested.

Your honors will find in one of the briefs before you, that a part of the bills submitted for your consideration were bills issued in 1861 and 1862.

In this report the committee took the ground that the State was not liable, because it assumed that those bills were issued in the aid of the rebellion, and therefore against the provisions of the amendments.

When the case came up the State directed that a determination be made, by judicial investigation, whether these were actually issued in aid of the rebellion; and the verdict of the jury established that they were not. And the Supreme Court has declared that these bills are equally obligatory with bills issued prior to 1860. Now, may it please your honors, that is our showing; and before I close let me briefly refer to the decision upon this case in the courts of the State.

These cases have been several times before the courts of the State. And it is fair to those courts to say, that they have never been presented as fully as now, when all matters properly involved in their consideration are brought to the notice of this court. In the Graniteville Company case an inspection of the judgment of the court will show that it rested mainly upon the convertibility of the bills. The act of 1843 is passingly alluded to. Furman *v.* Nichol so completely overthrew and overruled the chief ground relied upon in the Graniteville case, that it was considered

to have put the question of the receivability of these bills at rest. When these cases were argued in the State courts it was reasonable to suppose that the law of Furman *v.* Nichol would prevail. That court, however, stood upon the implied repeal by the act of 1843. This court will decide how far it will follow the ruling of the State court, when it will be seen that it holds that the act of 1843 had the design "to qualify the obligation which rested on the State to accept under all circumstances in payment of dues not only the notes of the Bank of the State of South Carolina, but of all such other banks as under their respective charters and various of the annual supply acts had the right to demand that their bills should be so received." I quote from the language of the court. But it will be at once admitted that the court never intended to put forth so extravagant a proposition as that an annual supply act could create or qualify or vacate a charter. The Attorney General concedes that the language of the court cannot by law embrace the Union Bank of South Carolina, the State Bank, or the Planters and Mechanics' Bank. And if the State could not reach these banks, nor is it to be presumed that it would intend to do so without color of right, why to these should it make its own Banks of less consideration? It is plain that it had been overlooked, that in the case of these private banks the act of 1843 could not have any effect; and if that had not been overlooked, no such decision would have been rendered as in these cases.

Can any thing be plainer than our proposition, that the act of 1843 was not intended to repeal, and did not repeal, the 16th section of the act of 1812? But if there could be a doubt, why are we to be the sufferers because of the doubt?

Can your honors say that there is no doubt, but that the act of 1843 does work this repeal? Unless you can, then the claim of these parties must be sustained by this court; for I apprehend that if there is any principle of law well settled, it is, that to work a repeal by implication the mind and the conscience of the court must be satisfied that

it was the intention of the legislature to do so, and that they have done so in proper terms also.

I have shown you what were the words of this section. How different from those used in other banks after 1831: how different from all banks after 1852. I have shown you this Bank Compilation, authorized by the State: its notice to the world concerning this Bank. I have shown you the opinion of the Attorney General. I have shown you the act of 1868. I have shown you the opinion of the committee—all combining to show that the authorities of the State up to 1868 never supposed that the State was not liable for the bills of their Bank.

I have too much sense of what is due to others to encroach for a moment upon the time which will be due to my friend the senior counsel in this case, and will therefore simply refer to the printed brief the cases cited.

I have only this to say in conclusion: I do not wish to put any new load on the State of South Carolina. God forbid that I should desire to add a dollar to the debt of the State. But if this is a debt, pay it, no matter what the consequence may be. And therefore it is that I protest here against a plea which, in my opinion and according to my view of the case, prefers convenience to an oblit gation, and postpones faith to treasure. I hope it will nobe so recorded of that State.